IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

WP(C).No. 26940 of 2006(F)

PETITIONER:

K.VISWANATHA RAO, S/O. K.R.KRISHNA
MALLAN, AGED 58, PALAMKADAVU HOUSE,
1ST CROSS ROAD, CONNECTING NETHAJI ROAD,
AND PERUMBAVOOR N.H., NEAR POWER HOUSE,
ALUVA, KERALA-683 101.

BY ADV. SRI.R. LAKSHMI NARAYAN
ADV. SMT.R.RANJINI

RESPONDENTS:
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1. STATE OF KERALA, REP. BY
CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
COLLECTORATE, KAKKANAD, ERNAKULAM DISTRICT.

3. SPECIAL TAHSILDAR (L.A.)GENERAL,
COLLECTORATE, ERNAKULAM.

4. THE KERALA WATER AUTHORITY,
REP. BY ITS SECRETARY, THIRUVANANTHAPURAM.

5. THE EXECUTIVE ENGINEER,
HUDCO DIVISION, KERALA WATER AUTHORITY,
KALAMASSERY-683 104.

R1 BY GOVERNMENT PLEADER SHRI M.R. BABU.
R4 AND R5 BY ADV. SHRI C. UNNIKRISHNAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext. P1	:	PHOTOCOPY OF THE NOTIFICATION UNDER SECTION 4(1) OF THE LAND ACQUISITION ACT 1994 DATED 25.09.1996.
Ext. P2	:	PHOTOCOPY OF THE INTERIM ORDER IN C.M.P. No. 41501/98 IN O.P. 23586/1998 DATED 27.11.1998.
Ext. P3	:	PHOTOCOPY OF NOTICE OF AWARD SERVED ON THE PETITIONER UNDER SECTION 12(2) OF THE LAND ACQUISITION ACT DATED 08.02.1999.
Ext. P4	:	PHOTOCOPY OF THE SKETCH.
Ext. P5	:	PHOTOCOPY OF THE REPRESENTATION DATED 18.04.2002.
Ext. P6	:	PHOTOCOPY OF THE REPRESENTATION DATED 24.12.2003.

/true copy/

P.A. TO JUDGE

K.T. SANKARAN, J.

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W.P.(C) No. 26940 OF 2006

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Dated this the 6th July, 2007

J U D G M E N T

The Writ Petition was disposed of by the judgment dated 20.12.2006. R.P. No. 571 of 2007 was filed by the respondents in the Writ Petition to review the judgment. R.P.No. 571 of 2007 was allowed. Accordingly, the Writ Petition was heard again.

2. The petitioner owns an extent of 12 cents of land in Sy.No.60/28-188 in Aluva Taluk. Out of this extent of land, an extent of 1 Are was sought to be acquired for the purpose of Adhoc Augmentation of Kochi Water Supply Scheme, which is called as Hudco Adhoc Augmentation Scheme. Ext.P1 notification under section 4(1) of the Land Acquisition Act was issued on 25.07.1996. On 03.02.1999, an award was passed in respect of the land belonging to the petitioner. It is stated in the Writ Petition that the possession of the property was not taken and that the scheme was implemented through the 1st Cross Road of Nethaji Road without taking the property of the petitioner and of some other persons. It

is also stated that the purpose of acquisition is over even without taking possession of the land belonging to the petitioner and that the land is lying idle for past more than 8 years. It is stated in the Writ Petition that the amount of compensation was not deposited under section 31(2) of the Land Acquisition Act. Exts. P5 and P6 representations were submitted by the petitioner to respondents Nos. 2 and 5 respectively, praying for releasing the land of the petitioner from acquisition. No reply was issued to the petitioner in respect of Exts. P5 and P6. The prayer in the Writ Petition is to issue a writ of mandamus or any other writ or direction to the respondents Nos. 1 to3 to pass appropriate orders, withdrawing from the acquisition and to release the land to the petitioner and to initiate proceedings under section 48(2) of the Land Acquisition Act.

3. The Writ Petition was disposed of by judgment dated 28th December, 2006 and direction was issued to the respondent Nos. 2 and 3 to take expeditious steps under section 48(2) of the Land Acquisition Act.

4. A Review Petition was filed by the respondent Nos. 1 to 3 in the Writ Petition as mentioned above stating that the possession of the property was taken on 23.03.1999 and it was handed over to the 5th respondent . It is also stated that since the property has already been handed over to the 5th respondent, proceedings under section 48(2) of the Land Acquisition Act could not be taken. It is also stated in the Review

Petition and it is reiterated by the senior Government Pleader that though possession was taken from the writ petitioner, the property was enjoyed by the petitioner himself on the basis of directions of the Petition Committee of the Legislative Assembly. It is also stated that on the recommendation of the Petition Committee, a separate alignment was adopted, excluding the property in question. Therefore, it is submitted by the senior Government Pleader that the land is not required for any public purpose. The land continues to be in the possession of the writ petitioner. Since the possession was taken, as per records, in 1999, a direction to initiate proceedings under section 48(2) of the Land Acquisition Act cannot be given.

5. It is submitted by the senior Government Pleader that the possession of the property was taken on 23.03.1999 and handed over to the 5th respondent. Therefore, a direction under section 48(2) of the Land Acquisition Act cannot be issued. It is also submitted by the learned Government Pleader that though possession of the property was taken from the petitioner as per records, the property continued to be in the actual possession of the petitioner himself. It is also stated that on the recommendation of the Petition Committee, a separate alignment was adopted excluding the property in question. The learned Government Pleader also submits that the land is not required for any public purpose

and that there is no objection for the respondents in the Writ Petition in petitioner continuing to be the owner in possession of the property.

6. These submissions are recorded. No further direction need be issued since it is submitted by the learned Government Pleader that the land is not required for any public purpose. A separate direction, as prayed for in relief No.1, need not be granted. As stated earlier, the relief No.2 does not subsist in view of the fact that the possession was taken earlier as per records.

In the light of the submissions made by the learned senior Government Pleader, no further directions are necessary in the Writ Petition. Writ Petition is closed recording the submission that the land is not required for any public purpose and that the respondents have no objection in petitioner continuing to be in possession of the land.

K.T. SANKARAN,
JUDGE.

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